Schaumburg Hyundai, Inc. *and* Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO. Cases 13–CA–32334 and 13–RC–18838

August 24, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On March 30, 1995, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent and the General Counsel each filed an answering brief to the other's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] as modified, and to adopt the recommended Order as modified.

We find no merit to the Respondent's exceptions to the judge's findings that the Respondent engaged in Section 8(a)(1), (3), and (5) violations during and after the Union's election campaign at its automobile dealership in Schaumburg, Illinois. We also agree with the judge that the Respondent's unfair labor practices have made the likelihood of holding of a free and fair second election slight and that the imposition of a bargaining order is warranted.[4] However, for the reasons stated below, we reverse the judge and find that the Respondent further violated Section 8(a)(1) when its owner, Rick Weissberg, threatened employees with more onerous working conditions, stricter enforcement of work rules, and the loss of earnings in retaliation for their union activities.[5]

In early 1994,[6] the Respondent employed seven mechanics on two separate shifts at its car dealership. On January 10, after the Union filed a representation petition and demanded recognition from the Respondent, Weissberg held a shop meeting for the mechanics. The judge found, and we agree, that Weissberg at the time had knowledge of the employees' union activities even though he was not present when the Union demanded recognition. Weissberg began the meeting by inviting employees to state their problems. He later suggested that he would favorably resolve the grievances in the absence of union representation.

The evidence also shows that, during this meeting, an employee told Weissberg that he wanted the Union to represent the mechanics. Weissberg said that he had ''no problem'' with the Union and would sign a union contract if the employees selected the Union to represent them. Weissberg warned, however, that if he ''signed the papers,'' the shop would be run ''strictly by union rules.'' Weissberg referred to a union contract that he held in his hand. He also said that a union shop would mean the end of the team system and a change to independent booking or individual assignments. According to Weissberg, if the Union ''came in,'' not all the mechanics would be considered journeymen and be paid journeymen's wages. He said that some would be considered semiskilled mechanics or apprentices. When Weissberg asked how many mechanics held journeymen cards, three or four employees raised their hands. Weissberg explained that only those ''who had journeymen's cards would be considered journeymen.''

Although the judge properly found that the Respondent violated Section 8(a)(1) by soliciting grievances during the meeting with the implication that they would be resolved without a union, he did not find that Weissberg violated the Act in any other manner during the January 10 meeting. The judge thus concluded that Weissberg did not threaten employees with more onerous working conditions, stricter enforcement of work rules, or the loss of earnings.[7] Rather, in the judge's view, Weissberg was informing employees that these changes would result from the implementation of the standard union contract that Weissberg was describing and that he held in his hand as he spoke. The judge stressed that the General Counsel did not submit copies of the union contract to refute the inference that the Union was going to insist on stricter rules as it had done in other contracts.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) of the Act by discharging employee Peter Goff, we do not rely on the comments the judge made regarding the Respondent's alleged justification for the discharge in the last sentence of sec. II,B,3, par. 2.

[4] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[5] These additional violations further bolster our finding that the likelihood of holding a free and fair election is slight and that the imposition of a bargaining order is warranted.

[6] All dates are in 1994, unless otherwise noted.

[7] The judge also found that Weissberg did not coercively interrogate employees either during this meeting or during his conversation with employee Goff on January 21, 1994. We find it unnecessary to pass on these allegations as the violations would be cumulative in light of the judge's finding, which we adopt, that Weissberg later coercively interrogated employee Robert Jenssen.

We conclude, based on *NLRB v. Gissel*, supra at 618, that the judge wrongfully imposed on the General Counsel the burden of showing that unionization would not cause lower wages and harsher working conditions as Weissberg said would occur if employees voted in the Union. Although an employer can legitimately make a prediction, as Weissberg did here, regarding the precise effects of unionization, the prediction must be carefully made on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond its control. *NLRB v. Gissel*, id. We do not find that Weissberg's simple act of waving a contract in front of the unit employees was sufficient to constitute objective evidence supporting his prediction that employees would suffer adverse consequences if they voted in the Union. We emphasize that the Respondent did not introduce this contract into evidence here or otherwise attempt to document its claim. Moreover, even assuming the Union's standard collective-bargaining agreement provided for the wages and working conditions that Weissberg had predicted, this does not mean that the bargaining unit employees would automatically be covered by such a collective-bargaining agreement following negotiations. For these reasons, we conclude that the Respondent further violated Section 8(a)(1) by Weissberg's threats of more onerous working conditions, stricter enforcement of work rules, and the loss of earnings.[8]

CONCLUSION OF LAW

Substitute the following for the judge's Conclusions of Law 1.

''1. By soliciting grievances from employees and implicitly promising to resolve them without a union, circulating a petition for employees to revoke their union authorization cards, suggesting the futility of union representation and the inevitability of a strike and threatening retaliation in the form of job losses, promising benefits to and interrogating employees, and threatening employees with more onerous working conditions, stricter enforcement of work rules, and the loss of earnings, the Respondent violated Section 8(a)(1) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Schaumburg Hyundai, Inc., Schaumburg, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(j) and reletter the subsequent paragraph.

''(j) Threatening employees with more onerous working conditions, stricter enforcement of work rules, and the loss of earnings because of their union activities.''

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election in Case 13–RC–18838 is set aside and that the petition in that matter is dismissed.

MEMBER STEPHENS, dissenting in part.

I join my colleagues in all respects except that I would not reverse the judge's dismissals of the 8(a)(1) allegations relating to Weissberg's remarks concerning changes that could occur under an area standard union contract. For the reasons stated by the judge, I would not find those remarks unlawful.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize or bargain with Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining agent of the following employees:

> All full-time and regular part-time journeymen mechanics, apprentice mechanics, semi-skilled mechanics and technicians employed by us at our Schaumburg, Illinois facility, but excluding shop foremen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT solicit grievances from employees and implicitly promise to resolve them without a union.

[8] We note that the present case is distinguishable from *Benjamin Coal Co.*, 294 NLRB 572 fn. 2 (1989), where the union's own campaign statements substantiated the employer's claim that the union would insist on the terms of its standard agreement. Here, there is no evidence regarding the bargaining position the Union would take if negotiations occurred.

WE WILL NOT circulate a petition for employees to revoke their union authorization cards.

WE WILL NOT suggest the futility of union representation and the inevitability of a strike and threaten retaliation in the form of job losses.

WE WILL NOT promise benefits to employees in order to discourage union support.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT discriminate against employees in order to discourage union activities by granting increases in hours, instituting a timecard program and issuing payroll sheets in response to unlawfully solicited employee grievances, announcing and implementing changes in PDI and other work assignments, announcing and instituting a 1-hour lunch period, and announcing and implementing raises to reward employees for rejecting the Union.

WE WILL NOT discharge or otherwise discriminate against employees to discourage union activities.

WE WILL NOT announce and implement changes in wages, hours, and terms or conditions of employment without first giving the Union a chance to bargain over such changes.

WE WILL NOT threaten employees with more onerous working conditions, stricter enforcement of work rules, and loss of earnings because of their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain collectively in good faith with Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit described above, with the Union's recognition to be retroactive to January 10, 1994, and embody any resulting agreement in a written and signed document.

WE WILL rescind the changes implemented in PDI and shift assignments and return those assignments to the situation that existed as of January 10, 1994.

WE WILL offer Peter Goff immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges, and make him and any other employees who were adversely affected by changes in PDI or shift work whole for any loss of earnings and benefits suffered as a result of our change, with interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

SCHAUMBURG HYUNDAI, INC.

Daniel P. Murphy, Esq., for the General Counsel.
James F. Hendricks Jr., Esq., for the Respondent.
Roger N. Nauyalis, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Chicago, Illinois, on January 31 and February 1, 1995. The General Counsel's consolidated and amended complaint alleges that Respondent violated Section 8(a)(1) of the Act by various threats and acts of coercion, including the solicitation of grievances that it intended to, and later did, resolve in order to trump the organizational efforts of the Charging Party Union (the Union), which had secured signed authorization cards from all of Respondent's seven mechanics. The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by granting and withdrawing benefits, by making changes in working conditions, and by discharging a leading union advocate, Peter Goff, to discourage union support. Finally, the complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union, despite its loss in a Board-conducted election, because the unanimous preelection authorizations of the employees were better reflections of their unadulterated views than the election results, which, the General Counsel asserts, should be set aside because of the Respondent's unfair labor practices. The Respondent filed answers denying the essential allegations in the complaint, and both sides filed posthearing briefs.

On the entire record in this case including especially the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTIONAL MATTERS

Respondent, a corporation with an office and place of business in Schaumburg, Illinois, is engaged in the retail sale and servicing of new and used cars. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The union campaign and Respondent's reaction

In early 1994, Respondent employed seven mechanics on two separate shifts at its dealership in Schaumburg. In addition, the Respondent employed Ira Reisman as a team leader on the second shift. He is an admitted supervisor and agent within the meaning of the Act. Respondent's management also included Owner Rick Weissberg, Shop Foreman Steve Hemmer, and Service Manager Dick Pittman, all of whom were admitted or stipulated supervisors and agents.

As a result of a contact from one of the employees, Union Business Representative Robert Keppler met with all of the mechanics, including Team Leader Reisman, at a restaurant in Schaumburg, on January 9, 1994. He and another business agent distributed material setting forth the Union's organiz-

ing procedures, as well as individual authorization cards, to all the people in attendance. Keppler told the employees about the advantages of union representation and he explained the use of the authorization cards. He said that the cards would be used to support the filing of an election petition with the Labor Board and to obtain recognition from the Respondent directly. The cards themselves provided that the signer authorized the Union ''to act as my collective bargaining agent with the company for wages, hours and working conditions.''

All the mechanics, including Reisman, signed cards and turned them in to the union agents. They also signed a document applying for union membership and paid a $25 initiation fee to the Union. It is clear that all the participants at this meeting thought Reisman was an employee eligible to authorize the Union to represent him, including Reisman himself. It turned out that they were wrong, but there is no evidence that, either at this meeting or thereafter, Reisman used his supervisory authority to coerce or encourage the other mechanics to sign authorization cards or to support the Union. There is no evidence that he even spoke at this meeting. On the contrary, the record shows that he subsequently turned against the Union and used his authority as an agent of Weissberg to get employees to forsake the Union.

Based on the signed cards that he had secured from the employees, Keppler filed an election petition with the Board the very next day, January 10. A copy of the petition was served on Respondent in due course, and, subsequently, an election was scheduled for February 25, 1994, at the Respondent's facility.

The same day he filed the election petition, Keppler visited Respondent's facility in order to request recognition. He arrived at the facility shortly before 4 p.m. He spoke to Dick Pittman, with whom he left a copy of a letter addressed to Owner Rick Weissberg, stating that a majority of the mechanics had designated the Union as bargaining representative and requesting recognition. Keppler also gave Pittman a copy of a recognition agreement and asked Pittman to give the documents to Weissberg, who was not present at the time.[1]

Keppler told Pittman not to change any of the mechanics' terms and conditions and received permission to talk briefly to some of the employees, which he did. Keppler then left the facility.[2]

After Keppler left, Pittman came out to the service area and said that the first-shift mechanics should not leave and all the mechanics should gather for a meeting with Weissberg in his office. Shortly thereafter, Weissberg arrived and met with the mechanics. Also present were Steve Hemmer and Reisman.

Weissberg started off the meeting by inviting employees to state their problems. One of the mechanics mentioned a complaint, with which many of the others agreed, that Steve Hemmer was improperly crediting himself with more hours than the rest of the mechanics.

Respondent operates under a so-called team system for work assignment and pay purposes. All mechanics, including Supervisors Hemmer and Reisman, pool their booked hours, that is, hours assigned to certain repairs and service work, and divided them equally. The hours were then multiplied by the mechanics' individual hourly rate, which ranged from $14.40 to $17.50, to determine their pay. In late 1993, what was essentially one team comprised of all mechanics was split into two teams, one for each shift. The mechanics performed various maintenance, installation and repair jobs, as well as new car predelivery inspection work, so-called PDIs, all of which carried specified booked hour amounts attributable to each. The booked hours for all of this work, including the PDI work, went into the pooled hours for each team, and the total hours were divided by the number of team members to reach individual booked hours.

Hemmer kept records of the pooled hours and his assignment of more hours to himself spawned the complaints that surfaced at the January 10 meeting. At the meeting, someone asked that the booking slips be studied and, when they were, they confirmed the complained-of inequities. Hemmer gave an explanation for crediting a greater number of hours to himself by stating that he stayed later than the others doing paper work.

Other complaints were aired at this meeting. Someone mentioned the desirability of initiating a system of timecards, which had not been used theretofore. Another employee asked that payroll sheets be attached to paychecks so that the mechanics could ascertain the hours credited to them. Weissberg agreed to implement these suggestions.

Toward the end of the meeting, Weissberg asked if there were any more questions and employee Bill Daly stated that he wanted the Union to represent the mechanics. Weissberg said that he had ''no problem'' with the Union and would sign a union contract if that was what the employees wanted. But he warned that if he ''signed the papers,'' the shop would be run ''strictly by union rules.'' It appears that Weissberg and several of the employees had previously worked at area dealerships that had contracts with the Union. Weissberg referred to a union contract that he held in his hand.

In his response, Weissberg told the mechanics that a union shop would mean the end of the team system and a change to independent booking, that is, individual assignments. He also said that, if the Union ''came in,'' not all the mechanics would be considered journeymen and be paid journeymen's wages. Some would be considered semiskilled mechanics or apprentices, he said. Weissberg then asked how many mechanics held union journeymen cards. Three or four people raised their hands. He explained that only those ''who had journeymen's cards would be considered journeymen.''[3]

[1] The recognition agreement contained no proposed terms and conditions of employment; it stated that those would be the subject of future bargaining.

[2] The above is based on the uncontradicted testimony of Keppler. He was corroborated as to the time of his visit by two second-shift mechanics, who had started work at 3:30 p.m.

[3] The above account of the January 10 meeting is a composite of the basically mutually corroborative testimony of employees Milewski and Goff. Although their accounts differ somewhat, as would be expected when different people are candidly recounting the same events, they were consistent in their essentials. Their testimony was more detailed than that of Reisman and Weissberg, who also testified about the meeting, and they were much more reliable and truthful witnesses. Reisman could recall very little about the meeting. Weissberg's recall was also faulty and he could not provide many details of the meeting. But, more importantly, his testimony contained a premise that I cannot accept. He testified that the meet-

On January 13, 1994, the next payday after the January 10 meeting, the mechanics received a .63-hour adjusted increase in their hours and a commensurate increase in pay. This reflected a corresponding decrease in Hemmer's hours. In addition, the mechanics were provided with detailed payroll statements with their paychecks, which they had not theretofore been provided. The statements included the number of booked hours and hours worked by each employee. Moreover, at about this time, the Respondent initiated the use of timecards to keep track of the mechanics' hours, in accordance with the suggestion made at the January 10 meeting.

At some point in mid-January, after a conversation with Owner Rick Weissberg, Supervisor Reisman circulated among employees a petition prepared by Weissberg. The petition was addressed to the Union, and stated that the signatories ''hereby revoke their Union authorization cards effective immediately.'' Reisman approached employees with the petition, showed it to them, and stated that Weissberg ''wanted to know if anyone wanted to sign it.''[4]

2. The discharge of Goff

Peter Goff was a highly regarded second-shift employee who replaced Supervisor Ira Reisman as team leader during his absence. He was an active union supporter and refused to sign the antiunion petition circulated by Reisman.

On January 21, Goff met with Owner Rick Weissberg in the latter's office about a pay discrepancy in his last paycheck. Goff had asked for the meeting because he was not credited properly by Reisman for working on the previous Saturday, even though he had worked most of the day before leaving due to an appointment of which he had notified Reisman in advance. Pittman had agreed that Goff was to be credited for the full day. Goff compared this to the complaint about Hemmer aired at the January 10 meeting. Weissberg agreed that the pay dispute should be resolved in Goff's favor.

Goff and Weissberg went on to discuss the recent adjustment in pay, the Respondent's team system and the union campaign. Weissberg said that the team system ''would be out if the union came in.'' Goff responded that this was not necessarily true because, once a union was ''voted in,'' any contract would have to be negotiated. Weissberg disagreed. He said that, in negotiations, he would make a wage offer at rates less than the mechanics were then earning and ''would not have to negotiate up from that point.''[5]

Weissberg also said that the employees would obviously not be happy with his offer and would go out on strike and that he would hire replacements in their stead. Weissberg added that in July the employees would have to strike again because that was when the Union's standard agreement expired. He said that he ''liked'' the employees and did not want to ''get rid of'' any of them. The conversation ended with another discussion of union journeymen status similar to that which took place in the January 10 meeting. Weissberg asked Goff if he had a union journeymen's card and Goff said that he did. Weissberg then asked if the Union would still recognize his card and Goff said that it would. Weissberg then said that, in a union shop, some people would be journeymen and some would not.[6]

On January 27, Goff reported for work as usual. It was slow that afternoon and Reisman asked Goff to clean his work area. Goff replied that he had already done so, and added that he did not get paid for this work. This was true since, under the team system of pay, the employees were paid only on the basis of booked hours. In any event, Goff did clean his work area that evening.[7]

Goff also asked either Reisman or Pittman if he could do some PDI work on new cars that were ''sitting outside.'' This work, which was ordinarily performed by any mechanic who had nothing else to do, was booked work, that is, work for which a mechanic was paid. Goff was told he could not do PDI work, even though it is clear, both from Goff's uncontradicted testimony and from documentary evidence, that such work was available that day.[8]

Later that evening, Reisman asked Goff if he wanted to go home and Goff agreed. Goff testified that he did not consider this an order. And Reisman admitted that Goff might have taken what he said as if ''it was just slow and just go home.'' He testified, ''I never said you were dismissed or anything like that, and not to come back.''[9]

Goff then went to change his clothes to get ready to go home. As he was leaving the changing room, he ran into Pittman, who asked where he was going. Goff said he was going home and Pittman reminded him that the mechanics were to clean their work areas. Goff said he had already done so, but Pittman pointed to some parts that were sitting on his workbench. The parts had been placed there by other mechanics, and Hemmer had instructed Goff to leave them alone. Goff responded to Pittman by stating that the parts were Hemmer's ''fucking problem.'' Since Pittman had

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ing had been scheduled prior to January 10 and that he had no conversation with Pittman prior to the meeting. He also testified that the employees had asked for the meeting. I reject this testimony which was not corroborated and contrary to the weight of the other evidence herein. For this and other reasons I have documented elsewhere in this decision, I found Weissberg generally to be an unreliable witness.

[4] The above is based on the testimony of Goff, Milewski, and Reisman, whose testimony was compatible. To the extent that there are differences, I credit the accounts of Goff and Milewski, who were the more credible witnesses. Reisman's testimony on this issue was somewhat evasive, as it was on other issues.

[5] Weissberg stated he would offer $11 or $12 per hour, but the mechanics were presently earning anywhere from $14.40 to $17.50 per hour.

[6] The above is based on Goff's credible testimony about what transpired at this meeting. Weissberg's account of this meeting was very sketchy and lacked the recall and detail in Goff's account. To the extent that he meant to deny he made the statements attributed to him by Goff, I reject Weissberg's testimony as the product of an unreliable and untruthful witness, as I have documented elsewhere in this decision.

[7] The above is based on Goff's credible testimony. To the extent that Reisman's testimony differs from that of Goff, I reject it because of Reisman's unreliability as a witness.

[8] Reisman testified that he could not remember if there was any PDI work that day, but documentary evidence reveals that there was and that unskilled porters performed the work on January 26, 27, and 28. Indeed, on Saturday, January 29, Supervisor Steve Hemmer booked, and was separately paid for, 21.8 hours of PDI work.

[9] Under Respondent's team system, leaving work early, if a supervisor approves, means simply that the employee is paid his pro rata share for the booked hours to which he would be entitled. For example, if a mechanic works half a day, he gets paid for half of his share of the booked hours that day.

walked away in apparent anger, Goff called him when he got home to apologize. Pittman accepted the apology and told Goff that it was ''okay'' and ''not a problem.''[10]

The next day, January 28, Goff was fired by Weissberg at a meeting in his office. He said that Goff was a detriment to the team system. He also read from letters prepared and signed by Pittman and Reisman at his request the night before to the effect that Goff had been insubordinate to them. Weissberg rejected Goff's appeal that he was a team player and should not be fired.

In the next few days, Goff spoke to Pittman on the telephone several times about his discharge. Goff's uncontradicted testimony is that Pittman told him that Weissberg ''exploded the situation of the 27th into a firing.'' Pittman said that he did not think that the situation ''would go that far'' and that Weissberg coerced him into signing the letter in which he accused Goff of insubordination. He also said that he had to be careful because ''the union was breathing down his neck.'' Pittman also said that the incident was a ''convenient situation'' over which Goff could be fired because he was in ''the majority of the yeses'' and ''they . . . were a majority of the no's.''[11]

3. Other conduct leading to and immediately following the election

On January 28, the day of Goff's discharge, Steve Hemmer announced, at a meeting of all mechanics, that henceforth PDI work was to be performed only by two supervisors, him and Reisman, and two employees, Milewski and Novak. Not only were these the only mechanics that would perform PDI work, but they were the only ones who would be compensated for it. This was a change from the inclusion of PDI work under the team system of pay. In addition, the PDI work was to be performed before or after shop hours and the payment of PDI work was listed separately on the payroll and booking documents.

Also at the January 28 meeting, Reisman told the mechanics that they could lose a lot more than the PDI work if they kept ''going with the [U]nion.'' He said that Weissberg could also take air conditioning installations and after-market accessory work away from them.[12]

On February 7, 1994, Reisman announced to second shift employees that they would have a scheduled 1-hour lunch period between 7:30 p.m. and 8:30 p.m. Theretofore, there was no official lunchbreak. Employees would simply eat while they continued working. This change came about because employee Bill Daly had raised the matter with Weissberg and Reisman in Weissberg's office.[13]

In addition, on February 7, Hemmer announced to all the mechanics that repair and service work would no longer be assigned to mechanics on a first-come, first-served basis. Thereafter, cars that came in during the day shift would be repaired only by first shift employees and cars that came in during the second shift would be serviced by second shift employees. This change was implemented. As a result there was less work for second shift employees since most cars come in to the shop during the first shift. This also meant less pay for the second shift mechanics since, under the team system of pay, their total booked hours were pooled and divided as a team.

About a week before the Board election, Weissberg approached employee Robert Jenssen at his workstation. Weissberg asked Jenssen why he would ''want the Union.'' Jenssen replied that he wanted to keep his benefits, have a retirement plan and union pay. Weissberg said that Jenssen could make more money with him without the Union and that he was ''thinking about having a 401(k) plan'' in about a year.[14]

On February 25, 1994, pursuant to the January 10, 1994 petition and a January 28 stipulated election agreement, the Board conducted an election in the following unit of Respondent's employees:

> All full-time and regular part-time journeymen mechanics, apprentice mechanics, semi-skilled mechanics and technicians employed by [Respondent at its Schaumburg facility] . . . but excluding shop foremen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Only four mechanics voted. The Union lost the election by a 3-to-1 vote, but it filed timely objections to the results based on Respondent's alleged unfair labor practices.

Within a day or two after the election results were announced, Weissberg held a meeting with all the mechanics. At the meeting, he announced a 75-cent-per-hour raise for all the mechanics. According to employee Jenssen, Weissberg prefaced his announcement by stating that he was glad that the Union had been defeated.

Shortly thereafter, on March 7, 1994, as the documentary evidence confirms, Respondent returned to its old preelection practice of assigning PDI work to all mechanics. This included assignment of the work to newly hired mechanics. Indeed, still later, according to Weissberg, who had originally changed the practice prior to the election because he wanted his more skilled mechanics to perform it, this work was assigned exclusively to unskilled porters on a permanent basis.[15]

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[10] Pittman did not testify in this proceeding so that portion of Goff's testimony dealing with Pittman is uncontradicted.

[11] In view of this uncontradicted testimony as well as the uncontradicted testimony that Pittman told Goff on the evening of January 27 that his conduct was ''not a problem,'' I must find that Pittman's letter describing what happened on January 27 and recommending Goff's dismissal was the product of Weissberg's effort to use a pretext to fire Goff. I cannot credit the hearsay account set forth in Pittman's letter.

[12] The above findings concerning the January 28 meeting are based on the uncontradicted testimony of Milewski. Hemmer did not testify and Reisman, who did, said nothing about the meeting.

[13] Reisman's testimony on this point came in response to questions from me. In his direct testimony, he denied announcing a lunchbreak to the employees, contrary to the stipulation of the parties. This is but one example of Reisman's evasiveness and unreliability as a witness.

[14] Jenssen's testimony on this point is essentially uncontradicted. Weissberg made general denials that he questioned employees and stated that he could not recall promising employees a 401(k) plan. I credit Jenssen's testimony as clearer and more reliable.

[15] Weissberg's explanations for his several changes in the assignment of PDI work do not ring true and I reject them. He said the first change was instituted because customer satisfaction reports he received shortly before the change indicated very low scores and therefore he gave the work to his most skilled mechanics. This is belied by the documentary evidence that unskilled porters performed

B. *Discussion and Analysis*

1. The general 8(a)(1) violations

a. *The January 10 meeting*

I find, in accordance with my credibility determinations, that Weissberg called for the January 10 meeting after he received notice that the Union had secured what it believed was majority support from employees and requested recognition. The meeting was a response to the Union's request for recognition. Weissberg, Respondent's highest ranking official, asked employees to air their grievances, which he suggested or implied would be resolved without need for a union. There can be no doubt of the reason for the solicitation of grievances in view of the timing of the meeting and Weissberg's expressed opposition to the Union when it was specifically discussed later in the meeting. Shortly after the meeting, Weissberg made the changes the employees wanted. This included an upward adjustment in pay for all the rank-and-file mechanics, the use of timecards and the inclusion of payroll sheets along with the employees' paychecks. In these circumstances, it is clear that Respondent's solicitation of grievances with the implication that they would be resolved without a union violated Section 8(a)(1) of the Act. See *Foamex*, 315 NLRB 858 (1994).

Contrary to the General Counsel's contention, however, I can not find that Weissberg violated the Act in any other way during the January 10 meeting. He did not unlawfully threaten employees with more onerous working conditions, stricter enforcement of work rules or loss of earnings; and he did not unlawfully interrogate employees by asking the employees how many of them carried union journeymen's cards.

First of all, it is clear, at least from Goff's testimony, that Weissberg was referring to a standard union contract with which he and some employees were familiar because they had worked in union shops. He held the contract in his hand as he spoke. Thus, I find that Weissberg's reference to the possible demise of the team system and a change to independent booking was simply a recognition that the Union did not, in its existing contracts, recognize the team system as it was utilized by Respondent. The General Counsel did not submit copies of the union contract to refute this inference, which I believe is a reasonable one on the evidence of record. Nor was there any suggestion by Weissberg that this change to an independent booking system would result in more onerous working conditions. The only evidence cited in this respect by the General Counsel was Milewski's theoretical and subjective ''understanding'' that independent booking might lead to favoritism. See page 11, footnote 5 of the General Counsel's brief. In context, the reference to independent booking was tied to something that would result from the Union's policy, as reflected in its agreements, not to something Weissberg would do on his own to retaliate against employees. I shall therefore dismiss this allegation in the complaint.

The General Counsel's loss of earnings allegation is based on Weissberg's remarks—again based on his assessment of the standard union contract—that, under a union contract, not all mechanics would receive journeymen's wages. Indeed, not all employees had union journeymen's cards, as the evidence shows. Here again, Weissberg was not threatening that he would take action to change anyone's wages. The Respondent's existing pay system itself provided for a scale that varied by as much as $3 per hour, depending, I presume, on the level of skill or experience of the particular mechanic. Considering here again the context of the union contract to which Weissberg was referring, I cannot view Weissberg's remarks as a threat by him to cut the earnings of the mechanics if they chose a union to represent them.

For some of the same reasons, I cannot agree with the General Counsel's suggestion that Weissberg unlawfully threatened stricter enforcement of work rules should the mechanics choose the Union. The General Counsel's support for this allegation comes primarily from Goff's testimony that Weissberg said, if the Union came in, there would be rules that would have to be enforced and ''he would have to follow them explicitly.'' Goff's testimony in this respect was followed immediately by the following statement: ''He had a union contract in his hand.'' Here again, the context of Weissberg's remarks makes it clear that he was not going to, himself, invoke stricter, or indeed any, new rules; it was the Union that was going to insist on rules—not, incidentally, stricter ones—as it had done in its other contracts. There was no threat of retaliation in his remarks; indeed, there was really no reference to the strictness of any work rules the Union might insist upon. In a footnote at page 36 of his brief, the General Counsel also mentions Goff's testimony that Weissberg would follow a stricter tardiness policy if he initiated the timecard program the employees wanted. The context of this statement shows that it was divorced from any discussion of the Union. Weissberg was simply questioning whether the employees really wanted a timecard system because tardiness would then be manifest. He did not initiate the proposal to utilize timecards and he did not threaten retaliation by more strictly enforcing tardiness rules because of employee support of the Union. This complaint allegation will also be dismissed.

Finally, the General Counsel asserts that, in this January 10 meeting, Weissberg unlawfully interrogated employees about their union support. This assertion is based on Weissberg's question as to how many mechanics held a union journeymen's card. I cannot view this as a coercive question. It was posed in the context of Weissberg's argument that not all of the mechanics would gain journeymen's pay status under a union contract. His point was that the union contract made distinctions. And some of the employees

PDI work the day before and the day after the change was announced. It is also belied by Weissberg's assignment of the work to newly hired mechanics, people whose ability to perform PDIs he could not have known when he changed the assignment of PDI work again about 10 days later. His explanation for the second change, a postelection return to the old system of assigning the work to all mechanics, was allegedly based on a simple request by the mechanics and their statement that they would do better. There was a third change, assigning the work exclusively to porters, which was not explained by Weissberg, but rationalized by an assertion that customer satisfaction scores improved thereafter. At this point, I lost his drift. Not only was Weissberg's testimony transparent and contradictory, but Respondent failed to back up his testimony with copies of the customer satisfaction ratings and reports that supposedly supported his decisions and which, he said, were available. The failure to submit such documents warrants an inference that they did not support his testimony. See *Automobile Workers Union (Gyrodyne) v. NLRB*, 459 F.2d 1329, 1336–1339 (D.C. Cir. 1972).

had worked under the union contract before being employed by Respondent. The question was not posed in order to obtain information that could be used later to pinpoint discrimination. Weissberg not ask which employees had signed cards or which were union members; and he did not seek to ferret out information about the Union's majority status. He simply wanted to disabuse employees of any pie-in-the-sky notions that all mechanics would be earning the highest wages under an existing union contract. Nor can I believe that any employee would reasonably view the question as coercive in the context in which it was posed. In all the circumstances, I do not find that Weissberg's question was violative of the Act.

b. *Circulation of the petition*

The evidence demonstrates that Reisman, at Weissberg's behest, circulated a petition addressed to the Union asking that employees be permitted to revoke their authorization cards. It is clear that Reisman was acting not only as a supervisor, which he was, but also as an agent for Weissberg. He told the employees he approached that Weissberg had authorized circulation of the petition and wanted to know if anyone wanted to sign it. The petition was initiated and prepared by Weissberg. Its circulation meshed with Respondent's earlier unlawful and coercive message that grievances could be resolved without a union; in the petition Respondent gave the employees a way out of the Union. Such conduct is clearly unlawful and violative of Section 8(a)(1) of the Act. See *Mini-Togs, Inc*., 304 NLRB 664, 653 (1991).

c. *The January 21 Goff-Weissberg meeting*

The General Counsel alleges that, in the January 21 one-on-one meeting between Weissberg and Goff, Weissberg violated the Act by suggesting that it would be futile to support the Union and that a strike would be inevitable, threatening discharge for engaging in union activities and interrogating Goff as to his union status. Since the evidence concerning the alleged unlawful interrogation in this meeting is virtually identical to that dealing with the union journeymen question on January 10, which I found was not unlawful, I reach the same result here. I dismiss the allegation of unlawful interrogation. The General Counsel has proved however, the other allegations of illegality in the January 21 meeting.

The evidence shows that Weissberg took the position, during an extensive discussion of possible negotiations between him and the Union, that he would propose what amounted to a decrease in wages for the mechanics and would not move from that position, thus forcing a strike during which he would replace the employees. In the context of these remarks, his subsequent statement that he liked the employees and would not want to ''get rid of'' them suggested the opposite. He was prepared to discharge employees whom he would replace under the scenario he described. The pivotal point made by Weissberg from which the parade of horribles he described would flow was that he would bargain in such a way as to force a strike and the loss of the mechanics' jobs. He suggested his own intransigence by stating that he would propose a pay cut and not move from that position. He did not describe a situation where his hand would be forced by inordinately high union demands or other matters outside his control. Nor did he even suggest a business-related reason for his pay cut proposal and subsequent intransigence. This distinguishes what he said here from what he said in the January 10 meeting about what might happen under a specific union contract. And it brings his comments within the scope of illegality. Here the clear implication was that the threatened results would come from actions taken by him and he made no pretense of suggesting that he would bargain in good faith. See *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618–620 (1969).

In these circumstances, I find that Weissberg's remarks as set forth above unlawfully suggested the futility of union representation and the inevitability of a strike and unlawfully threatened retaliation in the form of job losses, all in violation of Section 8(a)(1) of the Act. See *Lear-Siegler Management Service*, 306 NLRB 393, 404 (1992); *Baddour, Inc*., 303 NLRB 275 (1991); *Autozone, Inc*., 315 NLRB 115, 122–123 (1994).

d. *The interrogation of and the promise of benefits made to Jenssen*

About a week before the election Weissberg questioned employee Jenssen as to why he would want the Union. His question evoked Jenssen's response that he thought he would get better benefits with a union, including retirement benefits. Weissberg then used the information he obtained through his questioning by promising a retirement plan of his own, a 401(k) plan. It is obvious that the promise was made in order to discourage union support and the question was meant to evoke information that Weissberg could use in order to make an unlawful promise. It matters not that Weissberg mentioned that he was ''thinking about'' the plan or that it might be a year away. He mentioned the subject because he wanted to offer something to Jenssen to get him to change his mind about the Union. And Weissberg knew what he was talking about; he was the owner of the Respondent. This promise and interrogation was violative of Section 8(a)(1) of the Act.

e. *Reisman's threat that work would be lost*

On January 28, at a meeting during which another supervisor announced a discriminatory change in PDI work assignments, Reisman specifically tied the change to the union campaign. He said that, if the mechanics kept supporting the Union, they would lose a lot more than PDI work. According to Reisman, they would lose other work including installation and accessory work. This was a clear threat of reprisal. Moreover, the employees could have no doubt that he spoke with authority on this occasion, especially given the timing of the statement immediately after the announcement of the loss of PDI work and the specific mention of the Union. The employees also knew that Reisman was Weissberg's agent in circulating the antiunion petition. Reisman's statement was a clear and unlawful threat of retaliation in violation of Section 8(a)(1) of the Act.

2. The general 8(a)(3) and (1) violations

Shortly after the January 10 meeting, Respondent made certain changes as a result of the unlawful solicitation of grievances in that meeting. The employees received an increase in hours, and in pay, to reflect a reduction in Supervisor Hemmer's hours. The Respondent also initiated a timecard system and provided payroll information that the em-

ployees requested in the January 10 meeting. There is no doubt that the motivating factor in the promulgation of these changes and benefits was Respondent's attempt to discourage union activity and support. Indeed, Respondent offers no legitimate reason for these changes, except to argue that the employee grievances that were admittedly resolved by the changes were not associated with union activity. That argument—essentially that the January 10 meeting was held without Weissberg knowing about the Union's recognition request that same afternoon—was based on Weissberg's discredited testimony. In any event, when the changes were actually implemented, Weissberg clearly had knowledge of the onset of the Union. These changes were unlawfully motivated and thus violative of Section 8(a)(3) and (1) of the Act.

The January 28 announcement and implementation of the change in the assignment of PDI work was also discriminatory. Prior to the change all mechanics performed PDI work and it was a part of their pay. After the change only certain mechanics performed the work and were paid for it. Reisman's unlawful threat that if the employees stayed with the Union they could lose more than the PDI work is a virtual admission that this decision was motivated by antiunion considerations. Indeed, the failure to permit Goff to perform PDI work the day before when it clearly was available presaged the change. No reason was offered to Goff on January 27 or to the employees on January 28 for this change in assignment. Goff's discharge on January 28 was discriminatorily motivated, as I find hereafter, and it was related in part to the discriminatory reassignment of PDI work.

Weissberg gave an explanation for the change in the assignment of PDI work at the hearing, but, as I stated in footnote 15 above, his testimony is not credible. Indeed, his explanation is clearly pretextual and this rather strengthens the inference of discrimination. Respondent's contention that not all the mechanics were denied PDI work is unavailing. A mass layoff can amount to unlawful discrimination without regard to whether some antiunion people are carried along. The theory of this alleged violation was not that the selection of the employees who lost PDI work was discriminatory, but that the change itself was discriminatory. The evidence herein clearly shows that there was a change in work assignment, that some employees lost work because of it—Jenssen testified that he lost 20 percent of his work because of the loss of PDIs, and that Respondent's decision to change the PDI assignments was unlawfully motivated. In these circumstances, I find that the General Counsel has proved that a reason for the change was unlawful and has also proved that the Respondent's explanation was pretextual and therefore not a valid defense under the *Wright Line* test. See *Marina Associates*, 296 NLRB 1116, 1123 (1989), and cases there cited.

Also alleged as discriminatory is the announcement and implementation of another benefit, the 1-hour lunch period on February 7. In view of the other changes that were announced and implemented during the union campaign for discriminatory reasons, I find that the General Counsel has proved that a reason for this change, actually a benefit, was likewise discriminatory. This places the burden on Respondent to show that the benefit would have been implemented even in the absence of union considerations. Respondent has not persuasively made such a showing. Both Reisman and Weissberg said that the benefit was granted because employee Daly asked for it. But this begs the question. No reason was offered as to why it was granted at this time just because an employee asked for it. Indeed, the likely inference, and the one I make, is that Daly asked because he knew that Respondent had responded favorably to other employee grievances as a result of the union campaign. And it is also likely that Respondent acted on Daly's request because this was another favor it could grant to demonstrate that a union was not necessary. In view of Respondent's other unfair labor practices, the timing of this benefit and Respondent's inadequate explanation, I find that Respondent's announcement and implementation of a 1-hour lunch period a few weeks before the election was discriminatory and violative of Section 8(a)(3) and (1) of the Act.

The final alleged preelection discriminatory change is Respondent's announcement and implementation of a change in assigning work on the basis of when cars were brought in to the shop. Cars brought in during the first shift were handled only by first-shift mechanics and cars brought in during the second shift were handled only by second-shift mechanics. The second-shift mechanics suffered a loss in work and in pay because of this change since fewer cars are brought in during second shift hours. This change demonstrated Respondent's power to adversely affect employees and to divide the work force in the midst of a union campaign, and, in view of the other discriminatory changes made at this time, was itself also discriminatory. It would not have happened in the absence of a union campaign. Indeed, Respondent's witnesses offered no explanation for this change. In these circumstances, I find that this change was also discriminatory and violative of Section 8(a)(3) and (1) of the Act.

The General Counsel also alleges that Respondent's announcement and grant of a 75-cent-per-hour raise for all mechanics immediately after the Board election was discriminatory. This clearly was a reward for the employees' rejection of the Union, as indicated not only by the timing of the action but also Weissberg's remark in the same meeting that he was glad the Union lost the election. No other explanation was offered for the raise or for the timing of its announcement either at the time or in the unfair labor practice hearing. The employees were thus left with the clear impression that further benefits would be forthcoming if they continued to reject the Union. Indeed, the time within which to file objections had not yet run. Because of the other unfair labor practices committed by Respondent, it should have been obvious that objections would be filed, as they were, and a new election was at least within the realm of possibility. In these circumstances, Respondent's announcement and grant of a wage increase immediately after the election as a reward to the employees for having rejected the Union is clearly discriminatory and violative of the Act. See *NLRB v. Ralph Printing Co.*, 379 F.2d 687, 692 (8th Cir. 1967).

3. The discharge of Goff

I find that Respondent discharged Goff in order to discourage union activity and support. Goff was a known union adherent who had, 1 week before his discharge, engaged Owner Rick Weissberg in a private discussion about union representation. In that meeting, Weissberg firmly stated his opposition to the Union and Goff defended the notion of union rep-

resentation. Weissberg unlawfully threatened that it would be futile to support the Union because he would be intransigent in bargaining, and force a strike that would result in his replacement of the employees, whom he would have to ''get rid of.'' Weissberg also made it clear that he viewed the Union as a threat the team system. Goff's discharge was unusual because he was a highly regarded employee who would not be discharged under normal circumstances. He filled in for Supervisor Reisman in the latter's absence and he had an unblemished record with no warnings or complaints about his work. The record contained written warnings and complaints against employees, but there were none, prior to the discharge, in Goff's file.[16]

The evidence shows that Respondent seized upon a single incident on the afternoon and evening of January 27 as a pretext to mask its discrimination. Pittman admitted as much to Goff when he said that Respondent used the incident as a convenient way to rid itself of Goff because he was in the ''yes'' category, an obvious reference to Goff's union support, particularly since Pittman mentioned the extra care taken in forcing Pittman to document Goff's alleged impropriety due the presence of the Union. Reisman confirmed that he also was asked to document his recommendation for discharge at an unusual session with Weissberg the very evening of the incident. I hardly think Weissberg would have gone to all this trouble absent the union campaign. Weissberg's testimony is almost as damning since he railed on the witness stand about Goff not working well with his team and having a ''bad attitude, euphemisms, I find, in the circumstances of this case, for union animus. Incredibly, Weissberg also testified that, during the termination interview on January 28, Goff used profanity toward Reisman and Pittman and said he ''was going to do what he wanted and how he wanted, and I wasn't going to do anything about it.'' Not only was this unsupported by Reisman, who also testified about this meeting, but it is inherently implausible. If Goff had indeed ranted like this at a meeting with his employer, it is obvious that Respondent would have used Goff's alleged outburst as a reason for the discharge because it would have justified immediate termination without regard to what happened the night before.

It is also clear that the incident of the night before would not have warranted termination absent the union campaign and Goff's union support. Pittman essentially said that Respondent used the incident as a pretext. And Reisman did not send Goff home for disciplinary reasons. Goff was permitted to leave early because there was no work available to him. Reisman himself admitted that what he told Goff could have been interpreted as simply permitting Goff to go home because work was slow. Indeed, Respondent withheld from Goff PDI work that was clearly available that evening. Beginning the next day, Respondent discriminatorily withheld that work from all but selected mechanics.

As a result of his being denied PDI work and not having anything else to do, Goff was asked to clean his work area, which he did. He did make two arguably objectionable comments to his supervisors. He told Reisman that he was not paid for cleaning his work area, which was true; and he used an obscenity toward Pittman when he explained that several parts on his workbench were not his responsibility, which was also true since he had been told by another supervisor not to move them. Goff apologized to Pittman that very night for his harsh remarks and the apology was accepted. There was no insubordination. Goff did what he was supposed to do and he was prevented from doing available PDI work which was discriminatorily reassigned the very next day.

Even considering the two arguably objectionable comments devoid of context, it is also clear that Goff was subjected to disparate treatment. The General Counsel submitted uncontroverted evidence of similar incidents—even more serious—where the employees involved were treated more leniently than Goff. In December 1993, Milewski was initially suspended for 1 week for refusing to report to work one day without calling in. But that suspension was rescinded. In June 1994, employee Tom Jundt was sent home and issued a written warning for initiating a ''heated verbal altercation'' with his supervisor and refused to return to his work station ''continuing to argue,'' an offense for which he was sent home. Jundt was not suspended or discharged. In contrast, I have found that Goff did not refuse to perform an assigned task; he had cleaned his work area. He simply made snide remarks and uttered an obscenity. In any event, it is clear that Goff was treated differently than other employees who actually refused the orders of their supervisors. I can only conclude that this disparate treatment supports the inference, which I make, that Respondent wanted to make an example of Goff in order to discourage union activity.

In sum, the General Counsel has proved that a reason for Goff's discharge was discriminatory and he has also proved that Respondent's reason for the discharge was a pretext. Accordingly, the General Counsel has satisfied his burden under the *Wright Line* test and proved that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Goff. See *Marina Associates*, supra.

C. *The Invalidity of the February 25 Election*

As I have indicated, the Union filed objections to the Board-conducted election that it lost. The objections essentially paralleled the unfair labor practices that I have found. Because these unfair labor practices interfered with the Board election, I find that the election of February 25, 1994, was not free and fair and I shall recommend that it be set aside.

D. *The 8(a)(5) and (1) Violations and the Bargaining Order Remedy*

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union since January 10, 1994, and by making unilateral changes in wages, benefits, and terms and conditions of employment thereafter. The validity of these allegations turns on whether a bargaining order is an appropriate remedy for Respondent's other unfair labor practices found herein, within the meaning of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The General Counsel contends that Respondent's unfair labor practices were so serious an impediment to free choice that they should be remedied by issuance

[16] I reject Reisman's general, vague and uncorroborated testimony that he had problems with Goff's work prior to the discharge. Not only was there no documentary evidence supporting Reisman's testimony, but it is inconsistent with Respondent's utilization of Goff as a team leader in Reisman's absence.

of a bargaining order that reflects the Union's authorization card majority.

In *Gissel*, the Supreme Court approved the issuance of a bargaining order based on a union having secured majority status through authorization cards where an employer's unfair labor practices are so outrageous and pervasive that they could not be cured by traditional remedies and a fair election was therefore impossible, or where the unfair labor practices are less serious but ''the possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.'' 395 U.S. at 614.

The parties agree that the election unit of mechanics is an appropriate one. I find that, as of January 10, 1994, that unit contained 7 employees, all the mechanics except Hemmer and Reisman, who were supervisors. The General Counsel submitted evidence that all seven had signed union authorization cards. Indeed, all had applied for union membership and paid an initiation fee. The Union's representative status is thus established.

I also find that, because of Respondent's unfair labor practices, the chances of a fair election after use of traditional remedies would be slight and, on balance, employee sentiment as expressed above would be best protected by a bargaining order. Respondent's owner, Rick Weissberg, went after the Union's unanimous employee support right from the start. He addressed employees immediately after being notified of the Union's recognition request and solicited grievances with the suggestion that they would be remedied to obviate the need for a union. He went further and granted benefits and made changes suggested by the employees. He also made threats that he would be an intransigent bargainer who would force a strike and rid himself of the employees through the use of replacements. He announced and granted benefits and made other significant job changes, all for discriminatory reasons. And he discriminatorily discharged 1 of the 7 employees in the unit and granted all of the remaining employees a pay raise immediately after the Board election to reward them for rejecting the Union. This postelection raise is especially destructive of employee rights because it demonstrates that the Respondent is willing and able to use its economic power to insure the election result it wants. Nor can this violation adequately be remedied. The Board does not order the rescission of unlawfully granted raises or benefits. Over a year has already passed since the unfair labor practices occurred and Respondent has made no effort to remedy them. Respondent's unfair labor practices touched all the employees in a small unit. They will undoubtedly live on in the lore of the shop, particularly since the same managers and supervisors who committed them remain. Indeed, most of the unfair labor practices were committed, either directly or indirectly, by the owner of the Respondent. In these circumstances, I find that the unfair labor practices amount to hallmark violations that require a bargaining order. See *Gupta Permold Corp*., 289 NLRB 1234, 1258–1259 (1988); *America's Best Quality Coatings Corp*., 313 NLRB 470, 471–472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995) (Nos. 93-4039 et al.); *NLRB v. Don's Olney Foods*, 870 F.2d 1279, 1286 (7th Cir. 1989).

In accordance with Board precedent, the bargaining obligation herein runs from the date, after the Union establishes its majority, that Respondent embarked on its unlawful conduct. Here that date is January 10, 1994. Thus, Respondent's grants of benefits, changes in working conditions and other discriminatory actions found violative of Section 8(a)(3) and (1) of the Act also amount to unilateral changes in wages, hours, and terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act. See *Lapeer Foundry & Machine, Inc*., 289 NLRB 952 (1988).

CONCLUSIONS OF LAW

1. By soliciting grievances from employees and implicitly promising to resolve them without a union, circulating a petition for employees to revoke their union authorization cards, suggesting the futility of union representation and the inevitability of a strike and threatening retaliation in the form of job losses, and promising benefits to and interrogating employees, Respondent violated Section 8(a)(1) of the Act.

2. By granting increases in hours, instituting a timecard program and issuing payroll sheets in response to unlawfully solicited employee grievances, announcing and implementing changes in PDI and other work assignments, announcing and instituting a 1-hour lunch period, and announcing and implementing a 75-cent-per-hour raise immediately after a Board election to reward employees for rejecting the Union, Respondent discriminated against employees to discourage union activities and thus violated Section 8(a)(3) and (1) of the Act.

3. By discriminatorily discharging employee Peter Goff in order to discourage union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

4. A majority of Respondent's employees in the following appropriate unit selected the Union as their bargaining agent as of January 10, 1994:

> All full-time and regular part-time journeymen mechanics, apprentice mechanics, semi-skilled mechanics and technicians employed by [Respondent at its Schaumburg facility] . . . but excluding shop foremen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. By committing the violations set forth in conclusions 1, 2, and 3 above, Respondent interfered with the election of February 25, 1994, thus requiring the election to be set aside.

6. By committing the violations set forth in conclusions 1, 2, and 3 above, Respondent rendered unlikely the possibility of holding a fair election after the use of traditional remedies and, on balance, employee sentiment as expressed by the employees' selection of the Union on January 10, 1994, would be better protected by the issuance of a bargaining order.

7. By refusing to recognize and bargain with the Union on and after January 10, 1994, and making unilateral changes in wages, hours, and terms and conditions as described in conclusion 2 above, Respondent has violated Section 8(a)(5) and (1) of the Act.

8. The above violations are unfair labor practices within the meaning of the Act.

9. Respondent has not otherwise violated the Act.

THE REMEDY

In addition to recommending the customary cease-and-desist Order, notice-posting requirements, and certain affirmative remedies, including a bargaining order, I will recommend that Respondent rescind the changes it unlawfully implemented to the detriment of employees, that is, the changes involving PDI and shift work and restore the status quo ante. It does not appear that other unlawfully implemented changes need to be remedied by a restoration order and the General Counsel does not request one. Still others, such as pay raises, were benefits which the Board does not rescind, and nothing in the recommended Order should be construed as requiring a rescission of benefits granted. Of course, the subject matters of all the changes are bargainable issues. I will also recommend that Respondent offer immediate and full reinstatement to employee Peter Goff to his former job or, if that job no longer exists, to a substantially equivalent position and make him whole for any loss of earning or benefits lost as a result of the discrimination against him. Employees who suffered from the discriminatory changes involving PDI and shift work should also be made whole for their losses. The backpay is to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[17]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Schaumburg Hyundai, Inc., Schaumburg, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time journeymen mechanics, apprentice mechanics, semi-skilled mechanics and technicians employed by [Respondent at its Schaumburg facility] . . . but excluding shop foremen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Soliciting grievances from employees and implicitly promising to resolve them without a union.

(c) Circulating a petition for employees to revoke their union authorization cards.

(d) Suggesting the futility of union representation and the inevitability of a strike and threatening retaliation in the form of job losses because employees support a union.

(e) Promising benefits to employees in order to discourage union support.

(f) Coercively interrogating employees about their union activities.

(g) Discriminating against employees in order to discourage union activities by granting increases in hours, instituting a timecard program and issuing payroll sheets in response to unlawfully solicited employee grievances, announcing and implementing changes in PDI and other work assignments, announcing and instituting a 1-hour lunch period, and announcing and implementing raises to reward employees for rejecting the Union.

(h) Discharging or otherwise discriminating against employees to discourage union activities.

(i) Announcing and implementing changes in wages, hours, and terms and conditions of employment without first giving the Union a chance to bargain over such changes.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively in good faith with the Union as the exclusive bargaining representative of the employees in the above-described unit, the recognition to be retroactive to January 10, 1994, and embody any resulting agreement in a written and signed document.

(b) Rescind the unlawfully implemented changes in PDI and shift assignments and return those assignments to the situation that existed as of January 10, 1994.

(c) Offer Peter Goff immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges, and make him and any other employees who were adversely affected by discriminatory changes in PDI or shift work whole for any loss of earnings and benefits suffered as a result of Respondent's unlawful discrimination in the manner set forth in the remedy section of this decision.

(d) Remove from its files any reference to the discharge of Peter Goff, and notify him, in writing, that this has been done and that evidence of this unlawful action will not be used as a basis for future personnel actions against him.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Schaumburg, Illinois, copies of the attached notice marked ''Appendix.''[19] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[17] Because of the severity of the unfair labor practices I shall recommend a broad order within the meaning of *Hickmott Foods*, 242 NLRB 1357 (1979).

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS ALSO ORDERED that the election of February 25, 1994, in Case 13–RC–18838 is set aside.